

REMARKS

I. Status of the Claims

Claims 22-26 have been withdrawn.

Claims 2-18 have been amended. No new matter has been added.

Claims 1-26 are pending and claims 1-21 are presented for examination.

II. Objections to the Claims

Claims 3 and 2-21 have been objected to for misspelling the word “elastomer” in claim 3, and improper spacing between certain words in the first line of each of claims 2-21. Applicants respectfully submit that, unlike claims 2-18, claims 19-21 do not have improper spacing in the first line. Claims 3 and 2-19 have been amended to correct the informalities. Applicants submit that the claims have been amended to correct all informalities and respectfully request that the objections be withdrawn.

III. Provisional Double Patenting Rejection

The Examiner provisionally rejects claims 1, 3-6, 8-11 and 13-21 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 and 15 of copending Application No. 10/934,393 (the '393 application).

Applicants respectfully traverse this rejection. The '393 application was filed on September 7, 2004 and is the later filed application. An Office Action has not been received in connection with '393 application and Applicants presume that the '393 application has not yet been examined. A Terminal Disclaimer is not required for the present application. MPEP § 804(I)(B) states the Examiner must withdraw a provisional double patenting rejection in the first allowed application and allow the first filed application to issue:

If the "provisional" double patenting rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw that rejection in one of the applications (e.g., the application with the earlier filing date) and permit the application to issue as a patent. The examiner should maintain the double patenting rejection in the other application as a "provisional" double patenting rejection which will be converted into a double patenting rejection when the one application issues as a patent.

Applicants respectfully submit that a Terminal Disclaimer is not required in the present application and, at the time the claims are in condition for allowance, request that the provisional double patenting rejection be withdrawn and the current application allowed to pass to issue.

IV. Rejections under 35 U.S.C. §112

Claims 2, 7 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Specifically, the Examiner asserts that the term "comprises a single layer" is unclear. Office Action, dated December 14, 2004, p. 3, l. 23. Applicants respectfully traverse this rejection.

The Specification discloses and claims heat-resistant plastic tubes in multiple embodiments. Figure 1 depicts a single layer tube, whereas Figures 2-4 depict multi-layer embodiments. The "single layer" claimed by Applicants in claims 2, 7 and 12 is one "substantially made of polyester-based elastomer." Specification, p. 6, ll. 10-11. Applicants respectfully direct the Examiner's attention to further support for the single layer embodiment contained in the Specification at p. 15, ll. 4-23; pp. 17-18, ll. 25-7; and by pp. 20-24, Tables 1-4, examples 1-4.

Applicants submit that claims 2, 7 and 12 in light of Figure 1 and the Specification renders the meaning of "comprises a single layer" sufficiently clear such that a person having ordinary skill in the art, upon seeing the drawings and reading the Specification would understand the meaning of the term "comprises a single layer." Additionally, Applicants have amended claim 2 for clarity only and respectfully request that this rejection be withdrawn.

excellent retention of shape” for use in “harsh environmental atmospheres, . . . , where a maximum temperature reaches as high as 150° C.” Specification, p. 1, ll. 12-13; p. 3, ll. 6-8. Applicants accomplish this retention of shape based on the nature of the rubber.

Applicants submit that person having ordinary skill in the art, upon reading Ozawa, would not be taught or motivated that polyesters used in Ozawa can have the properties claimed in Applicants claim 1.

Applicants submit that claim 1 is not obvious in view of Ozawa. Claim 2 depends from claim 1 and is not obvious for at least those reasons stated in relation to claim 1 above. Accordingly, Applicants respectfully request that the rejection be withdrawn and the application be allowed to pass.

Claims 1-15 are rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,294,234 to Kertesz (Kertesz). The Examiner asserts that Kertesz teaches fuel conduits having thermoplastic crystalline polyester layers and thermoplastic elastomeric polyester layers which may alternate and wherein one of the layers can be conductive. Office Action, dated December 14, 2004, p. 5, ll. 1-6. Specifically, the Examiner contends that it “would have been an obvious matter of engineering choice to employ polyesters having suitable physical properties of the Kertesz conduits in order to tailor the tube’s properties to the use for which they are intended.” *Id.*, p. 5, ll. 9-12. However, the Examiner admits that Kertesz does not teach the properties recited in claim 1. *Id.*, p. 5, l. 8. Applicants respectfully traverse this rejection.

Nothing in Kertesz teaches or suggests that the fluid conduits might retain their shape, yield strength, or inner diameter dimensional stability at high temperatures. Applicants submit that one of ordinary skill in the art is aware that thermoplastic materials change shape in high heat. Nonetheless, the tube claimed by the Applicants “can be thermally bent at a temperature of the environment in which it is used or higher, and exhibits excellent retention of the shape after a thermal bending even if being left at the environmental temperature after the thermal bending.” Specification, p. 1, ll. 10-14.

Ostrander do not teach or motivate one of ordinary skill in the art to use a plastic as the conductive layer.


In view of the above argument, Applicants respectfully request that the Examiner withdraw this rejection, and allow the application to pass.

CONCLUSION

In view of the above, each of the presently pending claims in this application are believed to be in condition for allowance.

Dated: March 10, 2005

Respectfully submitted,

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